110-57

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 158.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

DANIEL M. CAREY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED OCTOBER 18, 1880.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 158.

THE UNITED STATES, PLAINTIFF IN ERROR,

vs.

DANIEL M. CAREY.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Petition	1	1
Copy of bond sued on	6	3
Citation to D. M. Carey	9	4
Albert Robinson	10	4
Patrick O'Brien	12	5
Answer of D. M. Carey	14	6
Order; case fixed	15	6
Verdict	15	6
Judgment	16	7
Bill of exception and exhibit	17	7
Assessment list	19	8
Petition and order for writ of error	20	8
Clerk's certificate	22	8
Writ of error	23	9
Citation	24	9
Proof of service	25	10

a . UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

UNITED STATES, PLAINTIFF IN ERROR, *vs.* D. M. CAREY AND OTHERS, DEFENDANTS IN error.	No. 7922.

John Ray, esq., special U. S. att'y for plaintiff in error.
Rouse & Grant, esqs., for defendants in error.
Transcript returnable to the Supreme Court of the United States on the second Monday of October, A. D. 1880.

1 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

UNITED STATES *vs.* D. M. CAREY, A. ROBINSON, & AL.	No. 7922.

Petition.—Filed June 21st, 1876.

To the hon. the circuit court of the United States for the fifth circuit and district of Louisiana:

The petition of the United States with respect shows that Daniel M. Carey, Albert Robinson, and Patrick O'Brien, all of the district of Louisiana, are in solido indebted to them in the sum of forty-three thousand dollars and interest, as hereinafter claimed, and the said Daniel M. Carey is indebted to them in the further sum of four hundred and fifteen dollars and interest, as hereinafter claimed, for this, that the said Daniel M. Carey, at the city of New Orleans, Louisiana, on the 19th December,
2 1874, then being proprietor of registered distillery No. 16, and there engaged in the business of distiller, within the first internal-revenue collection district of Louisiana, in the village of Gretna, parish of Jefferson, Louisiana, did, as required by law, make, sign, and deliver to petitioners the bond, a copy whereof is hereto annexed as part of this petition, in favor of petitioners, in the penal sum of forty-three thousand dollars, subject to the conditions therein expressed, and the said Albert Robinson and Patrick O'Brien did sign the same as sureties, for the faithful performance of the conditions thereof by the said Daniel M. Carey, and the said bond was duly approved and accepted on the 21' December, 1874.

Petitioners aver that the said Carey continued, engaged in, and carried on the business of a distiller, at the distillery aforesaid, from 19' December, 1874, to 14' April, 1875, inclusive.

They further aver that the said Carey wholly failed, neglected, and refused to comply with and perform the terms and conditions of said bond, and particularly in that he did not, during the period aforesaid, comply

with all the provisions of law in relation to the duties and business of a distiller; that he failed and neglected to pay the internal-revenue
3 taxes duly and legally assessed against *against* him during the period aforesaid; that he failed, neglected, and refused to pay the penalties incurred, and the fines imposed upon him for violations during the time aforesaid of the provisions of the said laws; that he failed and neglected to pay the internal-revenue taxes imposed by law on spirits then and there distilled by him; that while so then and there engaged in the business of distiller as aforesaid he did unlawfully remove from his said distillery to a place to said petitioners unknown, other than the distillery warehouse constituting a part of his said distillery premises, a large quantity of distilled spirits distilled by him at said distillery, to wit, fifty-four thousand nine hundred and eighty-seven proof gallons, on which the internal-revenue tax imposed by law was not and has not been paid.

Petitioners aver that from 19th December, 1874, to 15' April, 1875, the said Daniel M. Carey, then being engaged in and carrying on the business of a distiller at place aforesaid, was duly and legally assessed for internal-revenue taxes on the tax-lists of the first internal-revenue collection district of Louisiana for internal-revenue tax on spirits
4 then and there by him distilled at his said distillery, as follows:

On May list, 1875, for $19,598 internal-revenue tax on 23,916 proof gallons.

On special January list, 1876, for $10,500 int. rev. tax on 14,500 proof gallons.

On special February list No. 3, 1876, $11,599.70 int. rev. tax on 16,571 proof gallons.

Making together $41,347.70 internal-revenue tax on 54,987 proof gallons of distilled spirits, all of which, after due notice and demand of payment, the said Carey failed and neglected and refused to pay within the time prescribed by law, and still fails, neglects, and refuses to pay the same.

Petitioners aver that by reason of the non-payment of the said taxes by the said Carey within ten days after notice and demand, as aforesaid, he has, by law, incurred a penalty of five per cent. on the amount thereof, making two thousand sixty-seven $\frac{40}{100}$ dollars, which, added to said tax, makes the sum of forty-three thousand four hundred and fifteen dollars due to petitioners as aforesaid, with interest at the rate of one per cent. per month upon the several portions thereof, as hereinafter claimed, all of which is due and unpaid.

5 Petitioners aver that the failure, neglect, and refusal of said Carey to make payment of said taxes, penalties, and interest, and other his acts aforesaid, are in breach of the terms and conditions of said bond, and by reason thereof the same has become forfeited and the liability of the obligors thereon has become absolute.

Petitioners pray that the said Daniel M. Carey, Albert Robinson, and Patrick O'Brien be cited; that after due proceedings had the said bond be declared forfeited and the said defendants be condemned in solido to pay to petitioners the said sum of forty-three thousand dollars, with one per cent. per month interest on twenty thousand five hundred and seventy-seven dollars and fifty cents thereof from the 17th January, 1876, till paid, and the like interest on the remaining sum of eleven thousand

seven hundred and sixty-four dollars and sixty-three cents thereof from 15th February, 1876, till paid, and costs of suit. And that the said Daniel M. Carey be condemned to pay to petitioners the further sum of four hundred and fifteen dollars and thirty-five cents, with one per
6 cent. per month interest thereon from the 15th day of February, 1876, till paid. And, further, petitioners pray for all general relief.

(Signed) J. R. BECKWITH, *U. S. Att'y.*

Copy of bond.—Filed with petition June 21, 1876.

(30.)

UNITED STATES INTERNAL REVENUE.

DISTILLER'S BOND.

Know all men by these presents that we, Daniel M. Carey, residing at 187 Magazine st., N. O., La., as principal, and Albert Robinson, residing at Freetown, Jefferson Parish, and Patrick O'Brien, residing at 622 St. Denis st., New Orleans, La., as sureties, are held and firmly bound unto the United States of America in the full and just sum of forty-three thousand dollars, money of the United States, to which payment, well and truly to be made, we jointly and severally bind ourselves, our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this 19th day of December, A. D. 1874.

The condition of the foregoing obligation is such that whereas
7 the said Daniel M. Carey, proprietor of registered distillery No. 16, engaged in the business of a distiller within the first collection district of the State of Louisiana, to wit, at the distillery aforesaid, situate in the village of Gretna, parish of Jefferson, and State aforesaid:

Now, therefore, if the said Daniel M. Carey, proprietor of registered distillery No. 16, shall in all respects faithfully comply with all the provisions of law in relation to the duties and business of distillers, and shall pay all penalties incurred or fines imposed on him for a violation of any of the said provisions, and shall not suffer the lot or tract of land on which the distillery stands, or any part thereof, or any of the distilling apparatus, to be encumbered by mortgage, judgment, or other lien during the time in which he shall carry on said business, then this obligation shall be void; otherwise it shall remain in full force.

(Signed) DANIEL M. CAREY. [SEAL.]
ALBERT ROBINSON. [SEAL.]
PATRICK O'BRIEN. [SEAL.]

Signed, sealed, and delivered in presence of—

(Signed) EDWARD SCHLESINGER.
" J. G. P. SUMNER.

8 STATE OF LOUISIANA,
Parish of Orleans, ss:

Albert Robinson and Patrick O'Brien, the sureties in the within bond, being severally duly sworn, say that they are severally residents in the State

of Louisiana, and are each of them respectively worth forty-three thousand dollars over and above all debts, dues, demands, and incumbrances whatever against them, besides property exempt by law from execution, as per form 33.

Sworn before me this 19th day of December, 1874.

(Signed) J. G. P. SUMNER, *D'y Col'r.*

STATE OF LOUISIANA,
Parish of Orleans, ss:

I hereby certify that on this 19th day of December, one thousand eight hundred and seventy-four, before me personally came Daniel M. Carey, Albert Robinson, and Patrick O'Brien known to me to be the individuals described in and who executed the within bond, and severally acknowledged that they executed the same.

(Signed) J. G. P. SUMNER,
9 *Deputy Collector 1st District of La.*

Citation to Daniel M. Carey.—Issued June 21st, 1876.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Daniel M. Carey to comply with the demand of the United States of America contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held. And that you make due return hereof on the first Monday of July, 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Su-
10 preme Court of the United States of America, at the city of New Orleans, this 21st day of June, A. D. 1876, and of the Independence of the United States of America the 100th year.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Rec'd June 23, 1876, by the U. S. marshal, and on the 24th day of June, 1876, I served a copy hereof, with accompanying petition, on Daniel M. Carey, by handing the same to him in person in the city of New Orleans.

(Signed) S. B. PACKARD,
U. S. Marshal,
By S. W. REED,
D'y Marshal.

Citation to Albert Robinson.—Issued June 21st, 1876.

UNITED STATES
vs. } No. 7922.
D. M. CAREY & A. ROBINSON.

The President of the United States of America to the marshal of the United States for the district of Louisiana, greeting:

You are hereby commanded to summon Albert Robinson to com-
11 ply with the demand of the United States of America, contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans, in ten days after service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of July, 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 21st day of June, A. D. 1876, & of the Independence of the United States of America the 100th year.

[SEAL.] (Signed) F. B. VINOT, *D'y Clk.*

Marshal's return.

12 Received June 23, 1876, by the U. S. marshal, and after a diligent search and inquiry Albert Robinson, named herein, could not be found in this district.

New Orleans, July 3d, 1876.

(Signed) S. B. PACKARD, *U. S. Marshal,*
By S. W. REED, *D'y U. S. Marshal.*

Citation to Patrick O'Brien.—Issued June 21st, 1876.

UNITED STATES
vs. } No. 7922.
D. M. CAREY & ALBERT ROBINSON.

The President of the United States of America to the marshal of the district of Louisiana, greeting:

You are hereby commanded to summon Patrick O'Brien to comply with the demand of the United States of America contained in the petition of which a copy accompanies this citation, or to deliver his answer to the same in the office of the clerk of the circuit court of the United States, fifth judicial circuit and district of Louisiana, in the city of New Orleans,
13 in ten days after service hereof, or judgment will be rendered against him by default, which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place where the court is held.

And that you make due return hereof on the first Monday of July, 1876.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New Orleans, this 21st day of June, A. D. 1876, and of the Independence of the United States of America the 100th year.

[SEAL.] (Signed) F. B. VINOT, *D'y Cl'k.*

Marshal's return.

Received June 23d, 1876, by the U. S. marshal, and after a diligent search and inquiry Patrick O'Brien, named herein *herein*, could not be found.

New Orleans, July 3d, 1876.

(Signed) S. B. PACKARD,
By S. W. REED,
D'y U. S. Marshal.

14 *Answer of D. M. Carey.—Filed Nov. 8th,* 1876.

In U. S. circuit court, district of La.

UNITED STATES
vs.
D. M. CAREY ET AL. } No. 7922.

Comes now the defendant, Daniel M. Carey, and for answer to plaintiff's petition herein denies all and singular the allegations contained therein, except such as are hereinafter specially admitted.

And, further answering, said defendant admits the execution, delivery, and acceptance of the bond in said petition mentioned, and that afterwards, being proprietor of said distillery, he did engage in and carry on the business of distiller at the place aforesaid.

But this defendant specially denies any breach of the conditions of said bond.

Wherefore he prays that plaintiff's demand be rejected, with costs.

(Signed) ROUSE & GRANT,
Att'ys for Carey, Def't.

15 *Order: Case fixed.—Extract from the minutes, November term,* 1879.

NEW ORLEANS, *Thursday, March 11th,* 1880.

Court met pursuant to adjournment.

Present, Hon. E. C. Billings, district judge.

UNITED STATES
vs.
D. M. CAREY ET ALS. } No. 7922.

By consent of counsel the above causes are set down for trial on Tuesday, 16th instant, at 11 a. m.

Verdict.—Extract from minutes of March 17th, 1880.

UNITED STATES
vs.
D. M. CAREY ET ALS. } No. 7922.

This cause came on for trial—Jno. Ray, special counsel of the U. S. for plaintiff; Rouse & Grant for defendant, Carey—when the following jurors were called and sworn to try the issue found herein, viz:

16
1. J. Abelard.
2. F. B. Maguire.
3. Ch's Joubert.
4. F. Sarrasquita.
5. F. McKay.
6. Edgar Hincks.
7. H. Reggio.
8. E. F. Lavillebeurve.
9. E. L. Fonteneau.
10. E. J. Souby.
11. Wm. Epps, jr.
12. Peter Monroe.

And the jury being complete, the court appointed E. F. Lavillebeurve foreman thereof, and the trial proceeded.

And after hearing the pleadings and the evidence the cause was submitted to the jury who, thereupon did then and there, in open court, thro' their said foreman, render and deliver the following verdict, viz:

We, the jury, find for the defendant.

March 17, 1880.

E. F. LAVILLEBEURVE,
Foreman.

Whereupon it was ordered that the verdict be recorded.

Judgment.—Extract from judgment-book, November term, 1879.

NEW ORLEANS, *Wednesday, March 17, 1880.*

Court met pursuant to adjournment.

Present, Hon. Edward C. Billings, district judge.

UNITED STATES
versus
17 D. M. CAREY & ALS. } No. 7922.

By reason of the verdict of the jury, and in accordance therewith, it is ordered, adjudged, and decreed that there be judgment for the defendant, Daniel M. Carey, and against the demand of the United States, plaintiffs.

Judgment rendered March 17, 1880.

Judgment signed May 20, 1880.

(Signed) EDWARD C. BILLINGS, *Judge.*

Plaintiff's bill of exception.—Filed May 19th, 1880.

UNITED STATES
vs.
D. M. CAREY & ALS. } No. 7922.

United States circuit court, fifth circuit, district of Louisiana.

Be it remembered that on the trial of the above-entitled and numbered cause that plaintiff offered in evidence the original of the document hereto

annexed, being a certified copy, and marked "Exhibit A," and made a part of this bill of exception, being assessments made by the Commissioner of Internal Revenue for May, 1875, to the introduction of
18 of which defendants objected. The objections were sustained by the court and the document rejected, to which ruling of the court plaintiff excepts *to*, and tenders this his bill of exceptions, which is accordingly signed on this 19' day of May, 1880.

(Signed) EDWARD C. BILLINGS, *Judge.*

Document A referred to, made part of and filed with foregoing bill of exceptions, May 19th, 1880 (annexed on separate sheet).

20 *Petition for writ of error.—Filed May 20th, 1880.*

UNITED STATES
vs.
D. M. CAREY ET AL. } No. 7922.

To the judges of the circuit court of the United States for the district of Louisiana:

The United States, by John Ray, special assistant counsel for the United States in the above-entitled cause, suggests there is error in the final decree and judgment rendered in the above-entitled cause, to the prejudice of the said United States, wherefore he prays for a writ of error in said cause to the said circuit court, returnable to the Supreme Court of the United States on the second Monday of October, A. D. 1880, and that your honors sign the citations and make all orders in the premises necessary to effect the object of this application.

(Signed) JOHN RAY,
Spec'l U. S. Att'y.

Order for writ of error.

21 A writ of error is allowed as herein prayed for, returnable in the Supreme Court of the United States on the 2d Monday of October, 1880.

May 20th, 1880.

(Signed) EDWARD C. BILLINGS, *Judge.*

22 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit and district of Louisiana.

CLERK'S OFFICE.

I, Francis A. Woolfley, clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, do hereby certify that the foregoing 20 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had (14, 15, 16, 17, 18, 19) on the trial of the case of the United States vs. D. M. Carey et al., No. 7922 of the docket (1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13) of said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 9th day of October, A. D. 1880.

Nineteen words erased before signing.

Approved:

F. A. WOOLFLEY, *Clerk.*

I, Edward C. Billings, United States judge for the district of Louisiana, do certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and district of Louisiana, was, at the time of signing said certeficate, and is now, the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 9th day of October, A. D. 1880.

EDWARD C. BILLINGS, *Judge.*

23 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the circuit court of the United States in and for the fifth circuit, and holding sessions for the district of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you between the United States and Daniel M. Carey, a manifest error hath happened to the great damage of the said United States, as by their complaint appears: We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 20th day of May, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] F. A. WOOLFLEY,
Clerk of the United States Circuit Court
for the District of Louisiana.

(Indorsed:) United States Circuit Court. No. 7922. United States, plaintiff in error, versus Daniel M. Carey & others, defendant in error. Writ of error. Filed May 20th, 1880. F. A. Woolfley, clerk, by T. V. Coupland, d'y clerk.

24 THE UNITED STATES OF AMERICA:

Circuit court of the United States, district of Louisiana.

The President of the United States to Daniel M. Carey, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the

clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said United States as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20' day of May, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS, *Judge.*

25 (Indorsed:) United States circuit court. R. No. 7922. United States, plaintiffs in error, vs. Daniel M Carey & others, defendants in error. Citation.

Marshal's return.

Received Jun' 9, 1880, by the U. S. marshal, and on June 10th, 1880, I served a true copy of the within writ of error on Daniel M. Carey, defendant in error, by delivering the *same* to J. D. Rouse, esq., of the law firm of Rouse & Grant, attorneys of record for the aforesaid defendant in error, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Personally appeared before me E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a copy of the within writ of error on the defendant in error herein named, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 158. The United States, plaintiff in error, vs. Daniel M. Carey. Louisiana C. C. U. S. Filed 18th October, 1880.

110-57

FILED
DEC 11 1939
JAMES H. McKENNEY, CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, PLAINTIFF IN error,
vs.
DANIEL M. CAREY. } No. 158.

BRIEF FOR THE UNITED STATES.

clerk's office of the circuit court of the United States for the fifth circuit and district of Louisiana, wherein the United States are plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said United States as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 20th day of May, in the year of our Lord one thousand eight hundred and eighty.

EDWARD C. BILLINGS, *Judge.*

25 (Indorsed:) United States circuit court. R. No. 7922. United States, plaintiffs in error, vs. Daniel M. Carey & others, defendants in error. Citation.

Marshal's return.

Received Jun' 9, 1880, by the U. S. marshal, and on June 10th, 1880, I served a true copy of the within writ of error on Daniel M. Carey, defendant in error, by delivering the same to J. D. Rouse, esq., of the law firm of Rouse & Grout, attorneys of record for the aforesaid defendant in error, in person, in the city of New Orleans, district of Louisiana.

E. S. CURRY,
Dep. U. S. Marshal for District of Louisiana.

Personally appeared before me E. S. Curry, a deputy U. S. marshal in and for the district of Louisiana, and makes oath that he served a copy of the within writ of error on the defendant in error herein named, as set forth in his official return hereon.

E. S. CURRY,
Dep. U. S. Marshal for District of Louisiana.

Subscribed and sworn before me June 12, 1880.

F. A. WOOLFLEY,
Commissioner United States Circuit Court, District of Louisiana.

(Indorsement on cover:) No. 158. The United States, plaintiff in error, vs. Daniel M. Carey. Louisiana C. C. U. S. Filed 18th October, 1880.

110-57

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, PLAINTIFF IN error,
vs.
DANIEL M. CAREY.
} No. 158.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1883.

THE UNITED STATES, PLAINTIFF IN error,
vs.
DANIEL M. CAREY. } No. 158.

BRIEF FOR THE UNITED STATES.

This is an action on a distiller's bond to recover certain taxes assessed against the principal obligor, Carey, together with the penalty and interest denounced by law for delinquency on the tax-payer's part.

On the trial and in support of the issue on its part joined the United States offered in evidence an abstract from the original roll containing assessments made by the Commissioner of Internal Revenue, showing assessments against the defendant Casey.

To the admission of this evidence the defendant objected, and the objection being sustained by the court the United States thereupon excepted. (R., p. 7.)

There was a verdict for the defendant and judgment thereon. (R., p. 6.)

The only questions arising on this writ of error are those presented by the said exception.

ASSIGNMENT OF ERROR.

It was error to reject the evidence in question.

ARGUMENT.

The evidence should have been admitted.

It was not necessary that the whole assessment roll should be tendered in evidence, for that this roll was, as to each person mentioned in it, a several and distinct assessment.

The original roll, being an official document lodged in the office of the collector, came within the exception to the rule requiring the production of primary evidence, and hence a copy of any assessment contained therein, duly certified by the collector, as was done here, was competent evidence.

It is objected, however, that this action is based on an assessment made in the May list, 1875, for the first internal revenue collection district of Louisiana, and that the document referred to in the bill of exception does not purport to be the assessment list for said collection district.

This, it is submitted, is spinning rather fine. The document clearly shows assessments against the defendant Carey, in his business of distiller and for a period covering that mentioned in the petition, and also describes him as of Gretna, and as he describes himself in the bond. (R., p. 3.)

But, if an abstract from the collection roll was admissible, then it would seem to follow that extraneous evidence is necessary to show the character of the document from which the extract is made. It was, therefore, error

to reject the instrument because it did not show on its face the particular assessment roll from which it was taken, inasmuch as it could not possibly have gratified any such requirement without falsifying itself as a true copy. It was indispensable that it should be connected with the original instrument by evidence *aliunde*, and such evidence might be the collector's certificate or his parol statement to that effect.

It is not necessary that the assessable tax should correspond with the assessment in amount. If it turn out that a part of the amount assessed had been paid at the time of the assessment there may be a recovery to the extent of the default. (U. S. *v.* Rindskoff, 105 U. S., p. 418.)

Clearly the assessment was evidence *prima facie* of the amount of tax demandable. (*Ib.*, p. 418.)

A more specious point, raised by the defendant in error, is as to the validity of the bill of exception.

It is objected that the bill is invalid because (1) it does not show on its face that the exception was taken at the trial, and (2) because it was signed at a term of the court other than that at which the case was tried.

Undoubtedly it must appear that the exception was taken at the trial; but this may be by implication and need not be expressly alleged, as this court has repeatedly held, and no inapt phraseology, such as using the present for the past tense, will be allowed to defeat the right of the party assigning error, provided it may be collected from the record that the fundamental requirements have been observed. (Kellogg *v.* Forsyth, 2 Bl., 571; Simpson & Co. *v.* Dall, 3 Wall., 460; Railroad Co. *v.* Reeves, 10 Wall., 176.)

Now, when we look at this bill we find that it recites that the said document was offered in evidence; that the defendant objected; that the objections were sustained and the evidence rejected, "to which ruling of the court plaintiff excepts, and tenders this his bill of exception, which is accordingly *signed* on this 19th day of May, 1880."

It is true the verdict was rendered on the 17th March, 1880, but it is not true, by the face of this bill, that the exception was taken after that time. It was, indeed, "*signed*" after that time, but the true meaning of the bill is that the exception was taken contemporaneously with the act of the court sustaining the defendants' objection, and *omnia præsumuntur rite et sollenniter acta*.

The date is ascribed, entirely, to the judge's signature, and the use of the present tense in stating the exception and the tender of the bill shows that those proceedings were contemporaneous with the ruling of the court on which the exception was based.

As to the objection that the bill was signed at a term of court succeeding that at which the trial was had, it may be replied that it is sufficient if the judge put his hand to the bill at any time during the term at which judgment was signed. In this case this requirement was observed. The bill was signed on the 19th May and judgment was signed the day following. (Muhter *vs.* Ehlers, 91 U. S. 250.)

It is submitted the judgment must be ~~affirmed~~ reversed.

WM. A. MAURY,
Assistant Attorney-General.

110-17

Supreme Court of the United States.

OCTOBER TERM, 1883.

No. 158

THE UNITED STATES

versus

D. M. CAREY ~~ET AL.~~

BRIEF ON BEHALF OF DEFENDANTS IN ERROR.

The plaintiffs declared upon a distiller's bond for the recovery of certain taxes, assessed against the principal therein. Record, page 1. There was judgment for defendants.

The record contains but one bill of exceptions (page 7), the exception being to the rejection of an alleged assessment offered in evidence by plaintiffs. It does not appear what objections were made to the admission of the document, and they must be presumed to have been sufficient to warrant its rejection.

The trial of the case was concluded, and a verdict rendered, March 17th, 1880. Record, page 6. The bill of exceptions shows that the exception was *not taken at the trial.* The language of the bill is: "To which ruling of the court plaintiff *excepts*, and